

is working".<sup>18</sup> Some of NAB's constituents, (e.g. Great Trails Broadcasting), are more open in their desire to confuse the American people by urging the Commission to permit general audience programming to be credited as children's programming.<sup>19</sup>

The failure of the industry to prove that the current definition is working demonstrates that a more precise definition is in order. OC/UCC supports the Commission's proposed six part definition of "core programming" as previously indicated in Joint Comments with CME et.al.

**V. The Need for Quantitative Standards is Obviated by the Failure of Commercial Broadcasters to Increase Children's Programming Voluntarily.**

Many broadcasters have criticized the Commission's proposal to impose quantitative standards as contrary to the provisions of the CTA. OC/UCC urges the Commission to take note of the fact that four members of Congress, particularly, Representative Ed Markey - the chief architect of the CTA, has gone on record in this proceeding in support of quantitative standards.

*Require each licensee to air no fewer than 3 hours of qualified children's programming per week initially, rising to 5 hours per week by the year 2000.*

Letter of Rep. Ed Markey to Chairman Reed Hundt, Oct. 23, 1995

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<sup>18</sup>. Comments of NAB 16 -17.

<sup>19</sup>. Comments of Great Trails Broadcasting at 9.

In letters to the Chairman of the Commission, members of Congress have noted the failure of marketplace forces to achieve what Congress intended.<sup>20</sup> In addition to these letters from members of Congress who were actively involved with the passage of the CTA, the Commission must take note of the evidence on the record of this proceeding that there is no significant increase in the amount or quality of children's programming that would obviate the need to impose quantitative standards.

Those who would argue that the imposition of quantitative guidelines abridge the First Amendment fail to consider the firmly Constitutional grounds on which content-based regulation has been imposed in the past. The quantitative guidelines are not a new phenomenon. Historically they have been based upon the fact that the airwaves are a scarce resource. The airwaves remain a scarce resource today. Those who use the airwaves do so as public trustees and as such are obligated to serve those to whom the airwaves belong in

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<sup>20</sup>. *Five years later, the legacy of the Children's Television Act seem to me equally unambiguous: there has been no noticeable increase in the amount of educational programming on the air....How do we get beyond the failure and uphold the commitment we made to our children's future by passing the Children's Television Act five years ago? The proposal before the Commission tries to answer that question by recommending dramatic changes in the way the act is administered, and clarifying what is expected of broadcasters in the way compliance.*

Letter of Senator Lieberman to Chairman Reed Hundt, October 23, 1995 (emphasis added).

perpetuity. Under the CTA, children's programming is considered part of the service that broadcasters are expected to render to the general public.

As noted above, marketplace forces have been insufficient to achieve that end. In enacting the CTA, Congress specifically granted the Commission the broad discretion to impose quantitative standards after observing "the extent to which" licensees have provided programming "specifically designed" to educate children.<sup>21</sup>

The record of this proceeding speaks for itself. All accurate measures of programming trends indicate that standards are needed to achieve the objective of the Act — to increase the amount of educational and informational programming available to children. OC/UCC, consistent with Joint Commenters CME, et al., continues to maintain that "an hour a day of core programming is both constitutional and consistent with the CTA."<sup>22</sup>

## **VI. Program Sponsorship Undermines the Intent of Congress To Correct The Present Imbalance in Children's Programming Between Non-Commercial Stations and Commercial Stations.**

The Office of Communication disagrees with the views of some public broadcasters who believe that programming dollars should be shifted to

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<sup>21</sup>. CTA Section 103(a); 47 U.S.C. Section 202b(a).

<sup>22</sup>. Joint Comments of CME at 32.

noncommercial stations. This approach will only advance the interests of public broadcasters and not the child audience which can be best served with quality viewing choices on all channels in the local market.

OC/UCC agrees with those commenters who find no justification for creating disparities with respect to compliance with the CTA. In the opinion of five group station owners, the Commission should apply CTA quantitative standards uniformly and avoid disparities in terms of the cost of compliance.<sup>23</sup> Program sponsorship, according to the American Academy of Pediatrics, would shift "responsible programming to fewer stations, [thus] limiting the chances of children viewing more appropriate television on the channels they habitually tend to watch."<sup>24</sup> These comments concur with the view of the Office of Communication, which has previously stated that the goal of the CTA was to extend quality children's programming to popular commercial television stations.<sup>25</sup>

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<sup>23</sup>. Joint Comments of Cosmos Broadcasting, Cox Broadcasters, First Media Television, Paxson Communications Corp., and River City Broadcasting, at 28.

<sup>24</sup>. Comments of the American Academy of Pediatrics at 3. See also the Comments of Children Now at 5, "...we are concern that [program sponsorship] could result in the further marginalization of educational programming for children."

<sup>25</sup>. Comments of OC/UCC at 3.

**A. Program Sponsorship Advances the Financial Interests of Public Broadcasters, but Overlooks the Interests of the Local Child Audience.**

The Corporation for Public Broadcasting ("CPB"), the Association of America's Public Television Stations (APTS) and the Public Broadcasting Service ("PBS") had filed comments encouraging the shifting of programming dollars to noncommercial education broadcasters. According to CPB,

*By allowing commercial television to tap into the wealth of children's resources available through public television, the American children become the true beneficiaries of the sponsorship option.*

Comments of the CPB at 3.

This position adopted by CPB and others is flawed from the perspective of the viewing audience and undermines the intent of Congress to correct the present imbalance between noncommercial stations and commercial stations with respect to quality children's programming.<sup>26</sup> The contention that the Commission should adopt a rule " . . . if it results in an injection of new funds into public television"<sup>27</sup> is transparent and self-serving. The interests of the child audience would be better served by regulations that impose a uniform

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<sup>26</sup>. "...there is disturbingly little educational informational programming on commercial television." Children's Television Act of 1989, Senate Committee, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. (1989), at 7.

<sup>27</sup>. Comments of CPB at 4.

requirement to comply with CTA standards.

In joint comments, APTS and PBS urge the Commission to credit commercial networks for contributions to a PBS operated network.<sup>28</sup> The position of CPB, APTS and PBS is contrary to the interest of the child audience for two reasons:

**1) The infusion of new dollars into public broadcasting does not advance the goal of improving the performance of commercial broadcasters with respect to quality children's programming.** Public broadcasters have placed on the record of the proceeding vast evidence of their programming superiority in the area of children's programming. However, the Commission should view this as basis for the need to improve the programming performance of commercial stations through the uniform application of quantitative standards. Program sponsorship will only serve to exacerbate the vastly superior performance of public broadcasting and children's programming inferiority of commercial stations.

**2) The proposal to aggregate funds to be committed to a national**

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<sup>28</sup>. Joint Comments of APTS and PBS at 17. The Children's Broadcasting Corporation goes one step further and encourages the Commission to credit contributions to radio stations. Comments of Childrens Broadcasting Corporation at 5.

**PBS Children's Programming Fund is not designed to produce programming that is responsive to the ascertained needs of the local child audience.** The PBS Fund proposed by public television (and presumably operated by PBS) is designed to assure the distribution of nationally syndicated programming.<sup>29</sup> This programming would be the result of sponsorship proposals geared towards multiple markets.<sup>30</sup> While this may be the most efficient financial approach to funding the production of children's programming, the Commission must not forget the goal of promoting programming that is responsive to diverse needs of children in the local audience. PBS and APTS concede that " . . . programming sponsored in one market does not necessarily serve the needs of children in another market . . . . "<sup>31</sup> Therefore, the Commission must view this proposal as one that by the admission of its own proponents is not designed to be responsive to the disparate needs of the marketplace as

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<sup>29</sup>. Joint Comments of PBS and APTS at 17.

<sup>30</sup>. The "Commission should clarify (i) that sponsorship proposals need not be limited to a single market and (ii) that commercial broadcasters are encouraged to develop sponsorship proposals that encompass enough markets to assure the aggregation of sufficient resources to finance the production of educationally effective children's programming.

id. at 11 (emphasis added).

<sup>31</sup>. id. at 14.

ascertained by local broadcasters.<sup>32</sup>

In short, the Commission should disregard public broadcasting's proposal to credit commercial contributions to a public broadcast network.

**B. The Opportunity Cost to Commercial Broadcasters can be Minimized by a Transition Period for Complying with Industry-Wide Quantitative Standards.**

APTS and PBS have submitted an analysis that purports to estimate the opportunity cost to commercial broadcasters of complying with quantitative standards (e.g. 2 hours per week of high quality children's programming). APTS/PBS estimate such costs to range from \$308 to \$7,365 on a weekly basis.

Assuming such costs to constitute a major factor in the bottom-line of the increasingly profitable broadcast industry, OC/UCC submits that such costs can be minimized by adopting a transition period for complying with a quantitative standards.

According to Paul Krumins, President of Copley Entertainment<sup>33</sup>

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<sup>32</sup>. [The Commission] is concerned with licensee responsiveness to children's needs [in the local audience]....Licensees will retain reasonable discretion to determine the manner in which they assess the educational and informational needs of children in their communities...  
1991 Report and Order, 6 FCC Rcd 2111, para. 22.

<sup>33</sup>. Copley Entertainment is an industry consulting firm which provides strategic planning for a variety of distributors, producers, and broadcasters. Mr. Krumins is also Editor and Publisher of Syndication News.



quantitative standards "should be transitioned into law over three years" despite the unproven track record of educational programming.<sup>34</sup> Mr Krumins states that

*[T]he funding and distribution of purely educational programs must evolve from new sources, and that the advertisers who benefit most from children's viewership should take a lead role. The support, both national and local, of major consumer packaged goods and toy companies, will ease the entrance of creative, educational programming.*

id. at 2.

Therefore, despite the opportunity costs of implementation, quantitative standards are achievable over a reasonable time-frame that will permit adjustment by industry. Quantitative standards must be viewed as creating an even playing field in which all competitors must comply with the same requirements.

## **VII. Conclusion.**

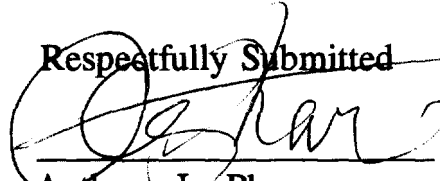
The record of this proceeding demonstrates that there has been no appreciable improvement in the programming response of commercial broadcasters to the CTA. OC/UCC, therefore, urges the Commission to adopt its proposed definition of "core programming" to be aired during the hours of

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<sup>34</sup>. Comments of Copley Entertainment, Inc. at 1.

7:00 am and 10:00pm and to require all broadcasters to air a minimum of one hour of such programming on a daily basis.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "A. Pharr", written over a horizontal line.

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## **Exhibits**

## **I. Survey Methodology**

## **SURVEY METHODOLOGY**

### **Sampling Selection and Size**

OC/UCC collected the comments of 48 commercial broadcasters (generally 1 page letters) that were filed with the Commission between the dates May 1st and September 30th 1995 in response to the NPRM. From this universal set, 12 stations were selected for inclusion in the survey based upon the availability of sufficient numbers of volunteer monitors that resided within the range of the station's broadcast signal. A list of the 12 stations is provided below:

KHTV, Houston,TX  
KIMA, Yakima,WA.  
KOLR, Springfield, MO  
KOTA, Rapid City, SD  
KPHO, Phoenix,AZ  
KTIV, Sioux City, IA  
WWBZ, Boston, MA\*  
WGEM, Portland, MA  
WKEF, Dayton,OH  
WPEC, W. Palm Beach,FL  
WWTO, Terre Houe,IN  
KKTV, Los Angeles, CA\*

(\* Comments for KKTV and WWBZ were provided by group owners Fox Broadcasting Company and Westinghouse Broadcasting Company, respectively)

### **Assigning Programs to an Evaluation Category**

For each station, OC/UCC identified 2 to 3 households to monitor children's programming for a two week period. In total, 30 households participated in the survey and monitored two episodes of each program. Only

adult members of the households over the age of 18 could participate in the survey.

All of the households assigned to a specific station monitored the same programming in order to obtain an objective opinion of each program.

Monitors were instructed to contact the station Program Manager to determine what programs would be aired during the two week period in fulfillment of the requirements of the Children's Television Act. In the event that the station did not respond to the inquiry, monitors were permitted to reference the local program guide.

Monitors completed a Survey Form (see next page) for each episode (generally 2) of all of the programs viewed. Based upon 85 completed Survey Forms, the following information was tabulated for each program: program name, air date, air time, program duration, evaluation category, and a general comment. The program category was intended to indicate the extent to which each monitored program educates or informs children (16 and under) about contemporary affairs or academic subject matter (see list of choices under item D of the Survey Form).

In order to determine the evaluation category for each program, the content evaluations (item D) made by each monitor were averaged. An evaluation composite was determined for the station's overall children's programming by averaging the evaluation categories of all of the individual programs. These station evaluation composites are provided in Table I of the text of the accompanying comments.

Station Call Letters: \_\_\_\_\_

**SURVEY FORM**

Program Name: \_\_\_\_\_

A. Date (e.g. 10/9/95): \_\_\_\_\_

B. Time (e.g. 12:30 pm): \_\_\_\_\_ : \_\_\_\_\_ am/pm

C. Duration (check one): one minute or less \_\_\_\_\_ 1 to 5 minutes \_\_\_\_\_  
5 to 30 minutes \_\_\_\_\_ 30 minutes to 1 hour \_\_\_\_\_

D. Content Evaluation (check one):

1. education and information the primary goal and sole purpose. \_\_\_\_\_

2. education and information the primary goal with entertainment as a secondary goal. \_\_\_\_\_

3. entertainment the primary goal with education or information the secondary goal. \_\_\_\_\_

4. primarily entertainment with a social or moral message. \_\_\_\_\_

5. entertainment with no social, moral, educational or informational value.  
\_\_\_\_\_

E. Comment on whether program is devoted to children's informational or educational needs: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **II. What Broadcasters Say/ What Viewers Say**



WHAT THE BROADCASTERS SAY			WHAT THE VIEWERS SAY		
Call Letter	Comment for Children's TV Proceeding		Viewer Evaluation of Programs*	Viewer Comments on Programs	Number of Children's Programs aired before 7:00 am
KHTV Houston, Texas	It is clear that American Broadcasters have reacted to the [CTA] in a responsible and timely fashion. [Opposed to regulatory revisions because of] increased amount of education programming that KHTV and other stations now allocate.		1	Re: Animaniacs - My 2 1/2 year old son asked for the TV to be turned off. Re: That's Warner Brothers - no clear social or moral message. Re: Flintstones - no educational or informational content for children..	1
KIMA Yakima, Washington	[We] are doing everything we can to not only meet but exceed in every area....We understand the definition and are responding with much more than might be currently required.		2	Re: Aladdin - just slick entertainment for kids. Re: Captain Planet - the message is couched in so much action and violence, I wonder if viewers get the intended message. Re: Teenage Mutant Turtles - .Definitely nothing here that is informational or educational.	0
KOLR Springfield, Missouri	[O]ver the last couple of years broadcasters have manifestly demonstrated that they are doing much more [educational and informational] programming....Most of the programming [satisfies] adults but the children [do not watch].		2	Overall view of KOLR - no children shows viewed that were educational with moral values. Re: Beakman's World - very corny but actually pretty educational! Re: Teenage Mutant Turtles - Typical Saturday morning junk - good vs. evil.	0
KOTA Rapid City, South Dakota	[The FCC] is NOT giving the broadcasters and the producers a chance. Since [CTA] there has been more than double the amount of educational and informational children's programming.		2	Overall comment - KOTA has virtually no programming for children. Re: Bump in the Night - I could see no redeeming social, informational education value in this production.	0

KPHO Phoenix, Arizona	Broadcasters have significantly increased children's educational and informational programming in response to the CTA.		2	<i>Re: Aladdin - this show was useless to our children. Re: Teenage Mutant Turtles - very violent... Re: The Mask - This kind of programming is leaving our children brain dead.</i>	2
KTIV Sioux City, Iowa	KTIV has significantly increase children educational and informational programming.		3	<i>Re: Bill Nye - This is well done. Information is accurate and well-paced... interspersed with humor to hold child's attention. My only question is the time of day [6:00am]. How many children do you reach this early? Re: Saved by the Bell - focused on entertainment, but did include a message on the importance of being yourself.</i>	3
WWBZ Boston, Massachusetts	Since [CTA's] adoption... the record shows a substantial increase in the amount of quality programming available for children.		4	<i>Re: RapAround - I'd definitely want my kids to watch this again. My 15 yr old... was engrossed. Re: Beakman's World - Confusing, fast-paced an utterly chaotic program in which a few disjointed scientific facts are buried.</i>	0
WGEM Portland, Maine	At WGME, we strive to acquire and to produce programming that will be beneficial to young viewers		3	<i>Re: Nick News - I don't think there are very many children up at this time -5:30am. Re: Top of the Class - very informative about the latest technologies in use in the classroom. Re: Saved by the Bell - children enjoy. Re: By the Way - very disappointing - all videos.</i>	3

WKEF Dayton, Ohio	We feel that we have done more than is necessary to help inform and educate the children of the Dayton....we do not believe that an appreciable number of Daytonians, certainly not a majority, want someone in Washington telling them what their children should be watching.		2	<i>Re: Biker Mice From Mars - station manager said they technically consider this children's programming...did not allow my children to watch...not a child show. Re: Saved by the Bell - good for older kids 7 - 12....this program was entertainment, but is a fairly good teen show....really just entertainment, not much content.... I really don't think this is a valuable show. Re: California Dreaming - mostly entertainment, ok for older.</i>	1
WPEC West Palm Beach, Florida	Responsible broadcasters, such as WPEC, have already significantly increased programming to serve the informational and educational needs of children.		4	<i>Program Manager's response to question about early morning programming - "if kids' TV was on in the afternoon, I wouldn't be able to sell advertising....can't put kid's TV on in the afternoon because people watch the adult entertainment (soap operas)." Re: Sing a Story with Belle (6:00am)-mostly entertainment, the story is not educational. Re: Nick News (5:30 am) - on much too early.</i>	3

WWTO Terre Houte, Indiana	Children are well served by local broadcasters, as evidenced by the growth of children's' educational and informational program offerings by local stations since enactment of the CTA.		2	<p><i>Overall comment on station - My children do not watch any children's programs on this station. There is nothing of value for them to watch. To have programs on from 5 to 7 am just to meet the requirements is terrible....Our 17 1/2 yr. old daughter said " There is nothing to watch. It;s all filled with violence and sex". Re: Double Dragon - not worth watching. I would not let my children or grandchildren get up at this hour (5:30am) to watch the violence. Re: Stepping Stones - Locally done by the children's museum and WTWO. For a local show it is pretty good. Re: Bill Nye - This program was devoted to education and information.</i></p>	4
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KTTV Los Angeles, California	Fox has recognized that an increase in the quantity of children's' programming by itself will not necessarily advance the goals of the CTA. Accordingly, [Carmen Sandiego & Fox Clubhouse] and all of Fox's children's programming activities, have been carried out under the auspices of the Fox Children's Network Advisory Committee in order to ensure that they are of the highest quality and interest.		3	<p><i>Re; Clubhouse - While this program can be applauded for lacking the violence and crude remarks found on other Fox 11 shows for children, there is little that is educational to be found. The social message is one of loyalty, but its is a rather hidden theme and hardly will be absorbed by most small children.</i></p> <p><i>Re: Carmen Sandiego - Educational information (i.e. facts) are presented throughout the show as clues to solve a "caper". However, some of the facts are rather esoteric and will sail right over the less bright children. Also, the information is not presented in an in depth, contextual way, but rather as a trivia-type game. Mostly entertainment with some learning opportunities.</i></p>	0
	Average Program Evaluation = 2				
	* on a scale of 1 to 5 with the following descriptions				
	1 = entertainment with no social, moral, educational or information al value.				
	2 = primarily entertainment with social or moral message				
	3 = entertainment the primary goal with education or information as a secondary goal.				
	4 = education and information the primary goal wither entertainment as a secondary goal.				
	5 = education and information the primary goal and sole purpose.				